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National Association of Regulatory Utility Commissioners

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Michael Powell
Chairman
Office of the Chairman
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

HE: Notice of Written Ex Parte Comments - 2 Originals filed in the proceeding captioned:

In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities GN Docket No. 00-185, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking (rel. March 15, 2002).

In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; CC Docket No. 02-33; Computer III Further Rcmaird Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review - Review of Computer III and ONA Safeguards and Requirements, CC Dockets Nos. 95-20, 98-10, Notice of Proposed Rulemaking (rel. Feb. 15, 2002).

In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket Nos. 01-92, 96-98 and 98-147, Notice of Proposed Rulemaking, FCC 01-361 (rel. Dec. 20, 2001).

Dear Chairman Powell,

During the November 2002 meeting of the National Association of Regulatory Utility Commissioners (NARUC), the members passed a resolution captioned "Citizen Access to Internet Content." The resolution raises issues relevant to each of the above-captioned proceedings.

Two of NARUC's members are participating in the appeal of the FCC's March 15, 2002 "Cable Modem" decision. The association has also filed comments in the Wireline Broadband proceeding pointing out numerous flaws in the FCC tentative conclusion to define local exchange carrier provision of digital subscriber line services as an "information service" and suggesting Title I as the source of authority for further FCC oversight. The November resolution raises other issues relevant to further commission action in both proceedings.

In both proceedings, the FCC has proposed to regulate broadband access to the Internet using its Title I "ancillary jurisdiction" authority. Customers using a telecommunications common carrier today have the ability to send and receive lawful information of their own design and choosing. Title II of the Communications Act's prohibition against unreasonable discrimination has historically protected the rights of those citizens to transmit and receive information without change in its form or content.

Some citizens today use broadband services and facilities as their chief source of information and news, even to the point of replacing newspapers, and more may do so in the future. Some citizens can get broadband service only through wireline telephone facilities, and others can get broadband service only through cable modems. In such cases, providers of broadband services or facilities have the technical capability to create a "walled garden" or "fenced prairie," designed to attract customers to preferred content but that also could keep consumers from reaching content other than those of the providers' choosing. It is conceivable that some providers of broadband services or facilities may have an incentive to restrict Internet access to favored news sources, and if they chose to do so, it could significantly harm free and open information exchange in the marketplace of ideas. Although the issue of "open access" has been debated largely as a question of fairness among different kinds of broadband providers, the restriction of user access and its effect on informed citizenship is an issue of real significance to citizens.

In response to this problem, the resolution resolves the following:

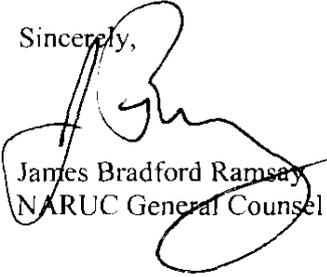
(1) All Internet users, including broadband wireline and cable modem users should:

- Have a right to access to the Internet that is unrestricted as to viewpoint and that is provided without unreasonable discrimination as to lawful choice of content (including software applications): and
- Receive meaningful information regarding the technical limitations of their broadband service

(2) Where a broadband facilities provider furnishes facilities on a nondiscriminatory basis to ISPs, including an affiliated ISP, nothing prohibits the affiliated ISP from promoting or preferring particular content.

NARUC was instructed by the resolution to "include these guiding principles in NARUC comments filed in all relevant FCC broadband proceedings." This letter and the attached resolution is an effort to comply with those instructions.

If you have questions about this filing, please do not hesitate to contact me at 202.898.2207 or jramsay@naruc.org.

Sincerely,

James Bradford Ramsay
NARUC General Counsel

cc: Christopher Libertelli, Advisor to the Chairman
Matthew Brill, Advisor to Commissioner Abemathy
Dan Gonzales, Advisor to Commissioner Martin
Jordan Goldstein, Advisor to Commissioner Copps
Lisa Zaina, Advisor to Commissioner Adelstein
William Maher, Wireline Competition Bureau Chief

Resolution Regarding Citizen Access to Internet Content

WHEREAS, In a "cable modem" Declaratory Ruling and Notice of Proposed Rulemaking released on March 15, 2002, the FCC declared that cable modem service is an information service, and it sought comment on whether the threat of blocking subscriber access to Internet content or services is sufficient to justify regulatory intervention; and

WHEREAS, The Commission proposes to regulate broadband access to the Internet using its Title I "ancillary jurisdiction" authority; and

WHEREAS, Customers using a telecommunications common carrier today have the ability to send and receive lawful information of their own design and choosing; and

WHEREAS, Title II of the Communications Act's prohibition against unreasonable discrimination has historically protected the rights of American citizens to transmit and receive information without change in its form or content; and

WHEREAS, Some citizens today use broadband services and facilities as their chief source of information and news, even to the point of replacing newspapers, and more may do so in the future; and

WHEREAS, Some citizens can get broadband service only through wireline telephone facilities, and others can get broadband service only through cable modems; and

WHEREAS, Providers of broadband services or facilities have the technical capability to create a "walled garden" or "fenced prairie," that is designed to attract customers to preferred content but that also could keep consumers from reaching content other than those of the providers' choosing; and

WHEREAS, It is conceivable that some providers of broadband services or facilities may have an incentive to restrict Internet access to favored news sources, and if they chose to do so, it could significantly harm free and open information exchange in the marketplace of ideas; and

WHEREAS, Although the issue of "open access" has been debated largely as a question of fairness among different kinds of broadband providers, the restriction of user access and its effect on informed citizenship is an issue of real significance to citizens; now therefore be it

RESOLVED, That the National Association of Regulatory Utility Commissioners (NARUC) convened in its November 2002 Annual Meeting in Chicago, Illinois, that all Internet users, including broadband wireline and cable modem users should:

Have a right to access to the Internet that is unrestricted as to viewpoint and that is provided without unreasonable discrimination as to lawful choice of content (including software applications); and

Receive meaningful information regarding the technical limitations of their broadband service; and be it further

RESOLVED, Where a broadband facilities provider furnishes facilities on a nondiscriminatory basis to ISPs, including an affiliated ISP, nothing here prohibits the affiliated ISP from promoting or preferring particular content; and be it further

RESOLVED, That the NARUC General Counsel should include these guiding principles in NARUC comments filed in all relevant FCC broadband proceedings.

Sponsored by the Committee on Telecommunications.

Recommended by the NARUC Board of Directors November 12, 2002.

Adopted NARUC Convention November 12, 2002.